



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 21, 2023
MOAHR Docket No.: 23-000400
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

HEARING DECISION
FOR INTENTIONAL PROGRAM VIOLATION (TRAFFICKING)

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent Joe Jones committed an intentional program violation (IPV) by trafficking Food Assistance Program (FAP) benefits. Pursuant to MDHHS' request for hearing and MCL 400.9, 7 CFR 273.16 and 7 CFR 273.18, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on July 3, 2023. William Etienne, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning Food Assistance Program (FAP) benefits?
2. Should Respondent be disqualified from receiving benefits for FAP?
3. Did Respondent receive an overissuance (OI) of FAP benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of FAP. Respondent was provided with the rights and responsibilities as a benefit recipient and advised that unauthorized use of FAP, or the buying, trading, or selling FAP benefits was prohibited when

submitting his application on February ■ 2020, and redetermination of benefits on September ■ 2020 (Exhibit A, pp. 12-60; 68-72).

2. Respondent has a child in common with ■■■■■ (Mother).
3. From December 5, 2020 through September 21, 2021, Mother made purchases at ■■■■■ using Respondent's Electronic Benefit Transfer (EBT) Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 96-98; pp. 109-113).
4. On June 11, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 87-88; p. 111).
5. On July 11, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 89-90; p. 111).
6. On August 5, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 91-92; p. 112).
7. On August 10, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 92-93; p. 112).
8. On September 5, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 99-100; p. 112).
9. On September 14, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, pp. 93-94; p. 112).
10. On October 5, 2021, Mother made purchases at ■■■■■ using Respondent's EBT Bridge card to complete the purchase with his FAP benefits (Exhibit A, p. 95; p. 113).
11. From January 2, 2021 through September 3, 2021, Mother made 13 different phone calls to inquire as to the balance of FAP benefits on Respondent's EBT Bridge Card (Exhibit A, p. 103).
12. On November 12, 2022, Mother spoke to OIG Agent. Mother stated that she used Respondent's FAP benefits with his permission and with him present. Mother stated that Respondent told her that she could use his FAP benefits in lieu his of paying child support.

13. Respondent was the only member of his FAP group.
14. Respondent did not have an apparent physical or mental impairment that would limit an understanding of the prohibition against buying, selling, or trading FAP benefits or letting an unauthorized person use his FAP benefits.
15. From August 1, 2016 through July 31, 2017, Respondent was disqualified from receiving FAP benefits due to committing an IPV (Exhibit A, pp. 115-121).
16. On December 15, 2022, MDHHS' OIG filed a hearing request alleging that Respondent intentionally trafficked FAP benefits from December 7, 2020 through October 5, 2021 (fraud period). OIG requested that (i) Respondent repay MDHHS as a recipient claim the value of trafficked benefits totaling \$[REDACTED] and (ii) Respondent be disqualified from receiving FAP benefit for a period of 24 months due to committing a second IPV.
17. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3015.

Trafficking and IPV Disqualification

MDHHS alleges that Respondent committed an IPV by trafficking FAP benefits and requests that Respondent be disqualified from FAP eligibility. IPV is defined, in part, as having intentionally "committed any act that constitutes a violation of [FAP], [FAP federal] regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of [FAP] benefits or EBT [electronic benefit transfer] cards." 7 CFR 273.16(c)(2) and (e)(6). Trafficking includes buying, selling, stealing, or otherwise effecting, or attempting to buy, sell, steal or otherwise effect, "an exchange of [FAP] benefits issued and accessed via [EBT] cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone" 7 CFR 271.2.

An IPV requires that MDHHS establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 (October 2017), p. 1 (emphasis in original); see also 7 CFR 273.16(e)(6). The federal regulations define an IPV as: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). Department policy defines trafficking as (i) the buying, selling or stealing of FAP benefits for cash or consideration other than eligible food; (ii) selling products purchased with FAP benefits for cash or consideration other than eligible food; and (iii) purchasing containers with deposits, dumping/discarding product and then returning containers to obtain cash refund deposits. BAM 700 (October 2018), p. 2; see also Department of Human Services, Bridges Policy Glossary (BPG) (July 2015), p. 66. Department policy also includes trafficking as (i) fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices, or (ii) redeeming or presenting for payment coupons known to be fraudulently obtained or transferred. BEM 203 (April 2021), p. 3. The federal regulations define trafficking to include "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone." 7 CFR 271.2. A household may allow any household member or nonmember to use its food assistance benefits to purchase food or meals, if authorized, for the household. 7 CFR 273.2(n)(3). Misuse of FAP benefits includes selling, trading or giving away FAP benefits, PIN or Michigan Bridge Card. BAM 401E (September 2021), p. 14.

In this case, MDHHS alleges that Respondent committed an IPV by allowing an unauthorized person to use his Bridge card and engage in the trafficking of benefits. Respondent acknowledged that he had received the Information Booklet advising him regarding "Things You Must Do" which explained how to use FAP benefits lawfully when submitting his initial application on February ■ 2020 and when submitting his redetermination of benefits on September ■ 2020. Respondent was the only member of his FAP group. From December 7, 2020 through October 5, 2021, Mother regularly used Respondent's Bridge Card to complete food purchases at different stores. Mother stated that she used Respondent's FAP benefits with his permission and with him present. Mother stated that Respondent told her that she could use his FAP benefits in lieu of paying child support.

MDHHS presented evidence that sufficiently established that Respondent authorized someone outside of the FAP-benefit group to make purchases with his card. However, per federal regulations, in order to establish an IPV for trafficking/unauthorized use, the benefits must be exchanged for cash or consideration, other than eligible food items. 7 CFR 271.2. Policy does not define "consideration," but it is generally defined as

something of value that is bargained for by a party as part of a contract. The requirement of “cash or consideration” requires MDHHS to establish that Respondent received something of value for use of his FAP benefits. In this instance, Mother’s statement that Respondent allowed her to use his FAP benefits in lieu of paying child support is supported in that Respondent never reported that his FAP Bridge Card was stolen despite that it was in regular use and that he made the effort to renew his FAP benefits. Respondent did not appear at the hearing to contradict any evidence presented.

Based on the evidence presented, MDHHS has presented clear and convincing evidence that Respondent committed an IPV of his FAP benefits through trafficking.

Disqualification

An individual who is found pursuant to an IPV disqualification hearing to have committed a FAP IPV is disqualified from receiving benefits for the same program for 12 months for the first IPV, 24 months for the second IPV, and lifetime for the third IPV. 7 CFR 273.16(b)(1); BAM 720, p. 16. As discussed above, MDHHS has established by clear and convincing evidence that Respondent committed an IPV. From August 1, 2016 through July 31, 2017, Respondent was disqualified from receiving FAP benefits due to committing an IPV (see Exhibit A, pp. 115-121). Because this was Respondent’s second IPV for FAP, Respondent is subject to a 24-month disqualification from receipt of FAP benefits.

Repayment

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the benefits. BAM 700, p. 1. The amount of benefits MDHHS is entitled to recoup/collect for a trafficking-related IPV is the value of the trafficked benefits as determined by (i) a court decision, (ii) the individual’s admission, or (iii) documentation used to establish the trafficking determination, such as an affidavit from a store owner or sworn testimony from a federal or state investigator of how much a client could have reasonably trafficked in that store, which can be established through circumstantial evidence. BAM 720, p. 8; 7 CFR 273.18(c)(2).

Here, MDHHS seeks repayment from Respondent of \$[REDACTED] the amount of the trafficked benefits. As discussed, MDHHS presented documentation to show that Respondent’s Bridge card was used by Mother, a person who was not a member of his FAP group, with consideration. Mother used Respondent’s Bridge Card to complete her purchases on several occasions throughout the fraud period, the transactions totalling \$[REDACTED]. Therefore, the evidence presented by MDHHS is sufficient to establish a valid recipient claim for \$[REDACTED].

DECISION AND ORDER

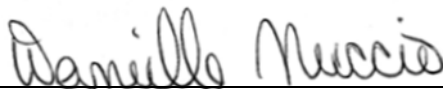
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. MDHHS has established by clear and convincing evidence that Respondent committed a FAP IPV by trafficking benefits;
2. Respondent is subject to a 24-month disqualification from FAP; and
3. Respondent is responsible for a recipient claim of \$[REDACTED] for trafficked FAP benefits.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP recipient claim in the amount of \$1,717.60, less any amounts already recouped/collected, for the fraud period.

IT IS FURTHER ORDERED that Respondent be personally disqualified from FAP for a period of 24 months.

DN/dm



Danielle Nuccio

Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via-Electronic Mail :

Petitioner

OIG

MDHHS-OIG-

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Policy-Recoupment

StebbinsN

MOAHR

BSC4HearingDecisions

Respondent

[REDACTED]

[REDACTED]

[REDACTED]

Via-First Class Mail :